

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED

CLERKS OFFICE

DAVID G. STERN,

2004 JUN -7 P 1:22

Petitioner,

U.S. DISTRICT COURT

DISTRICT OF MASS

CIVIL ACTION NO. 04-10465-NG

vs.

DAVID L. WINN, Warden
Federal Medical Center,
Devens,

HON. NANCY GERTNER, USDJ
MAGISTRATE JUDGE DEIN

Respondent.

PETITIONER'S ANSWER TO RESPONDENTS MOTION TO DISMISS

INTRODUCTION

Now comes the above named Petitioner, DAVID G. STERN, Pro Se, and hereby files his Answer to Respondent's Motion to Dismiss and in support states as follows:

1. Petitioner denies that the Motion should be granted and states that he in fact has stated a legal claim upon which relief can be granted.
2. Further, that the legal authority upon which the Petition is based is distinguishable both factually and legally from the stated reasons justifying dismissal asserted by the Respondent.
3. The new policy announced by the BOP in December of 2002 with respect to community confinement did not correctly apply the law and therefore any grounds for dismissal of the Petition should be rejected by this Court.
4. In addition, the Department of Justices' interpretation of the BOP's designation authority and the change in policy was promulgated in violation of the Administrative Procedures Act.

5. Also, the new BOP Policy violates the Ex Post Facto Clause of the United States Constitution (Art. 1 § 9 cl. 3).

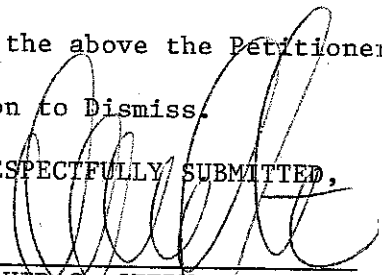
6. Finally, the new BOP Policy violated the due process rights of the Petitioner and is an independent ground upon which relief can be granted.

CONCLUSION

For the above stated reasons, the Plaintiff avers that his Petition does state a claim upon which relief can be granted and is supported by the legal authority recited in the accompanying Memorandum in Support of the Answer filed herewith. Based upon all of the above the Petitioner requests that this Honorable Court deny the Motion to Dismiss.

DATED: JUNE 5, 2004

RESPECTFULLY SUBMITTED,



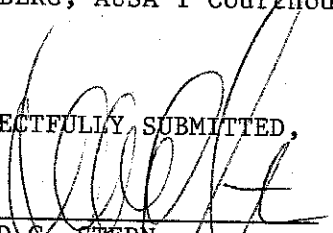
DAVID G. STERN
23799-038 UNIT I (CAMP)
FEDERAL MEDICAL CENTER, DEVENS
P.O. BOX 879
AYER, MA. 01432

CERTIFICATE OF SERVICE

I, DAVID G. STERN hereby certify that on JUNE 5, 2004, I placed a copy of the Petitioner's Answer to Respondent's Motion to Dismiss and a Memorandum in Support of that Answer in the mail box located at the Federal Medical Center, in Ayer, Massachusetts in an envelope sent first-class mail with postage pre-paid and addressed to: JEREMY M. STERNBERG, AUSA 1 Courthouse Way Suite 9200 Boston, Massachusetts 02210.

DATED: JUNE 5, 2004

RESPECTFULLY SUBMITTED,



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